

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,	)	Application No. C-1628/NUSF
on its own motion, seeking to	)	
conduct an investigation into	)	Progression Order #11
intrastate access charge reform	)	
and intrastate universal	)	
service fund.	)	Entered: September 12, 2000

BY THE COMMISSION:

1. On January 13, 1999, the Commission entered its findings and conclusions in this docket for the purpose of reducing implicit subsidies that exist in Incumbent Local Exchange Carrier (hereinafter "ILEC") charges for various telecommunications services and to implement a Nebraska Universal Service Fund (hereinafter "NUSF"). The purpose of the NUSF is to ensure that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices. Therefore, reductions in ILEC implicit subsidies are replaced, where necessary, with explicit support from the NUSF to ensure this goal. In order to comply with Federal Telecommunications Act of 1996 and applicable Nebraska Statutes, funding for the NUSF is derived from an explicit and competitively neutral surcharge.

O P I N I O N S   A N D   F I N D I N G S

2. Since the adoption of the original findings and conclusions in the January 13, 1999, order, issues have arisen that either need to be clarified or that were not originally addressed. Accordingly, this order adopts a series of tentative findings and conclusions. Subsequent to the entering of this order, the Commission will hold a hearing on the tentative findings and conclusion contained herein, after which a final order will be entered in this matter.

**A.      Access and Basic Local Exchange Benchmarks**

3. In its January 13, 1999, order, the Commission adopted different access charge requirements with respect to non-rural and rural ILECs. Non-rural ILECs were required to remove all implicit subsidies from intrastate access charges during a three year transition period that commenced on September 1, 1999. Rural ILECs were required to establish a Carrier Common Line (hereinafter "CCL") charge no higher than \$0.02 per minute, adopt the local transport restructure with the transitional interconnection charge (hereinafter "TIC") phased to other transport rate elements over four year, and adopt the July 1, 1998 interstate Traffic Sensitive rate levels with an adjustment for interstate settlements by a factor of 1.25 where appropriate.

4. The Commission also adopted basic local exchange rate benchmarks of \$17.50 per month for residential service and \$27.50 per month for single-line business service that are applicable to both rural and non-rural ILECs. It was the Commission's belief that

as a result of Commission action with respect to access charges, all ILECs would be required to raise basic local exchange rates to the benchmarks. With respect to certain ILECs, this has not been the case. Therefore, the Commission clarifies its intent in this matter.

5. It is the position of the Commission that unless either an ILEC's average cost to provide basic local exchange within a study area is less than the Commission adopted benchmarks or all subsidies have been removed from an ILEC's basic local exchange and access prices, basic local exchange prices should be set at the Commission's adopted benchmarks or higher. The Commission deliberately did not require rural ILECs to initially eliminate all subsidies as it did for non-rural ILECs. The Commission was willing to allow some subsidies to remain in rural ILEC access charges, pending, inter alia, FCC action on interstate access charges, with the caveat that rural ILECs would charge the Commission adopted benchmarks for basic local exchange services. Therefore, the Commission tentatively concludes that rural ILECs shall be required to raise basic local exchange rates to the Commission benchmarks unless either the average cost to provide basic local exchange within a study area is less than the Commission adopted benchmarks or all subsidies have been removed from basic local exchange and access prices.

6. Specifically, the Commission tentatively finds that the CCL charge, TIC charge, and Dial Equipment Minute (hereinafter "DEM") and other weighting factors represent implicit subsidies in access charges. The CCL charge is designed to recoup the cost of the wire loops from a central office to a customer premise. Loop costs change on a per-line basis, i.e. change as more loops or lines are added. However, the CCL charge is assessed on a minute of use basis, and minutes typically grow at a faster rate than do lines. As a result, CCL charge growth exceeds the growth in line costs and this results in an implicit subsidy. Further, the Commission recognizes that loop costs require a large amount of subsidy at this time. However, the Commission does not believe that only one class of company should pay a disproportionate share of the subsidy. When a subsidy is left in access charges it is primarily paid by interexchange carriers (hereinafter "IXCs") and their customers. The Commission does not believe that this is equitable and non-discriminatory.

7. The TIC charge results from the method used to convert from a unitary traffic sensitive rate structure to a common and dedicated traffic sensitive rate structure. In this restructure, special access charges are used to determine the costs of common and dedicated trunking charges related to transport of switched access traffic to and from IXCs. Special access charges are used because the Federal Communications Commission (hereinafter "FCC") determined the special access charges are more representative of the switched access trunking costs than are the costs derived through the FCC's existing Part 69 process. The Commission agrees with the FCC's finding and therefore also tentatively concludes that the TIC represents an implicit subsidy.

8. DEM and other weighting occur under the FCC cost rules

when factors are increased above actual measured levels to allocate additional costs to interstate access charges. For example, under certain conditions a carrier can triple their DEM factor, effectively allocating three times more of the applicable switching investment to interstate access charges than is actually used. Given that rural company intrastate access charges are set based upon interstate access charges, any additional weighting will have been effectively carried into intrastate access charges. Again, the Commission tentatively concludes that any additional weighting constitutes an implicit subsidy.

9. The Commission does not believe that the subsidies identified above are not necessary. To the contrary, the Commission believes that the monies these subsidies represent are needed to ensure affordable rates for Nebraskans, subject to an earnings cap, at least during the transition period. However, it is the position of the Commission that these subsidies should first come from the basic local exchange customers that create the costs until the basic local exchange service rates reach the Commission adopted benchmarks. After basic local exchange rates reach the Commission adopted benchmarks, any remaining subsidies removed should come from the NUSF. This will ensure that all users of telecommunications services contribute to universal service in a competitive and non-discriminatory manner.

10. Consistent with the earlier tentative conclusion, rural ILECs will only be required to remove the amount of subsidy necessary to raise basic local exchange rates to the benchmarks.

#### **B. TIC Phase-out**

11. In the January 13, 1999, order, the Commission required that rural ILECs adopt the July 1, 1998 interstate Traffic Sensitive rate levels. The Commission also required that the TIC be phased to other intrastate Traffic Sensitive rate elements over the four year transition period which may result in certain intrastate Traffic Sensitive rate elements exceeding the July 1, 1998, interstate rate levels. To clarify this issue, the Commission tentatively concludes that intrastate Traffic Sensitive rate elements can exceed July 1, 1998, interstate rate levels after the TIC phase-out. This only applies to the rate elements to which the TIC is phased and the TIC phase-out must be done in a revenue neutral manner.

#### **C. Mirroring Interstate Rates**

12. As discussed above, the Commission required that rural ILECs adopt the July 1, 1998, interstate rate levels for Traffic Sensitive rate elements except for the TIC. The Commission tentatively concludes that rural ILECs should not be required to automatically update their intrastate Traffic Sensitive rates when interstate Traffic Sensitive rates change.

#### **D. Bifurcation of Local Switching Element**

13. In the January 13, 1999, order, the Commission required non-rural ILECs to bifurcate the intrastate local switching rate

element. It has come to the attention of the Commission that said requirement may place an undue burden on the non-rural ILECs. Therefore, the Commission reconsiders its original finding and tentatively concludes that non-rural ILECs should not be required to bifurcate the intrastate local switching rate element at this time.

#### **E. CLEC and CMRS Provider Access Rates**

14. The access requirements contained in the Commission January 13, 1999, order only applied to ILECs. Since that time, the Commission has received several informal complaints regarding the access rates charged by Competitive Local Exchange Carriers (hereinafter "CLEC") and Commercial Mobile Radio Service (hereinafter "CMRS") providers. The Commission finds that it has jurisdiction with regard to CLEC intrastate access rates and tentatively concludes that CLEC intrastate access rates should be subject to the same requirements as the ILECs. Therefore, absent a demonstration of cost, a CLEC's access rates in a given area cannot exceed the access rates of the ILEC.

15. With respect to CMRS providers, the Commission tentatively concludes that the Communications Act of 1934, as amended, currently preempts the Commission from regulating a CMRS providers intrastate access rates. Specifically, Section 332(C)(3) states "...no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service...". A state Commission may petition the FCC for authority to regulate the rates for any commercial mobile service if it can be demonstrated that market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory. However, the Commission also tentatively concludes that even with a grant of authority from the FCC, state law currently prohibits the Commission from regulating a CMRS providers intrastate access rates. Specifically, Neb. Rev. Stat. 86-808 prohibits the Commission from regulating "...wireless telecommunications service" with the exception for universal service funding.

16. However, if specific examples of unjust and unreasonable access pricing by CMRS providers exists, the Commission would examine such information to determine if it should seek additional authority from the Legislature and the FCC.

#### **F. Benchmark Re-evaluation**

17. In its January 13, 1999, order, the Commission stated that it would re-evaluate the basic local exchange rate benchmarks within two years from the date of the order. The Commission reconsiders this finding and tentatively concludes that the basic local exchange benchmarks will not be reevaluated until after the end of the rural ILEC four year transition period. The Commission is concerned about setting up a moving target for rural ILECs by potentially increasing the benchmarks before some basic local exchange rates even reach the existing benchmarks. Therefore, the Commission is of the opinion that the basic local exchange benchmarks should be re-evaluated only at the end of the rural ILEC four year transition period, at which

point all basic local exchange rates should have reached the existing benchmarks.

#### **G. Earnings Period Averaging**

18. In the January 13, 1999, order, the Commission allowed companies to elect a one year or a three year average period for determination of an ILEC's earnings relative to the calculation of NUSF payments. However, the Commission believes that a three year period may not be an adequate period of time to eliminate earnings fluctuations relative to an ILEC's capital investment cycle. Given that the average depreciation life for a telephone central office switch is twelve years, the Commission tentatively concludes that ILECs should be allowed to elect an earnings period option, in years, equal to twelve divided by the number of their central offices. In addition to the current one and three year options, an ILEC with one central office would have the option of electing a twelve year option, an ILEC with two central offices would have the option of electing a six year option and an ILEC with three central offices would have the option of electing a four year option. This should allow companies to better manage their earnings and avoid any unfair penalties to companies or undue burdens on the NUSF.

#### **H. Company Definition**

19. For purposes of the NUSF, the Commission tentatively concludes that a company or carrier shall mean any and all entities providing telecommunications services that are jointly owned, controlled, or operated. In determining ownership or control, the Commission for purposes of the NUSF shall look to all levels of ownership including, but not limited to, holding companies, partnership arrangements, or other corporate structures.

#### **I. Rural Company Definition**

20. In its January 13, 1999, order, the Commission defined rural and non-rural carriers in accordance with Section 3(a)(47) of the Telecommunications Act of 1996. This definition results in, what is currently the third largest basic local exchange service provider in the state, Citizen's, being potentially classified as a rural carrier. The Commission reconsiders this finding and is of the opinion that the Federal definition of a rural carrier is not appropriate for Nebraska. Therefore, the Commission tentatively concludes that rural and non-rural carriers should be defined in accordance with Neb. Rev. Stat. 75-609.01(1). This would define rural carriers, for the purposes of the NUSF, as carriers that serve less than five percent of the state's subscriber lines. Of the ten communities in Nebraska with populations of at least 20,000; two of these communities are served by Citizen's, with the remaining eight communities served either by Qwest or ALLTEL. As such, the Commission does not believe it is appropriate to define Citizens as rural carrier for purposes of the NUSF.

21. The Commission believes that the Telecommunications Act of 1996 was correct in providing for separate treatment of rural and non-rural ILECs and has adopted such for the state of Nebraska.

However, the Commission does not believe that the definitions in the Telecommunications Act of 1996 are the best fit for Nebraska. Therefore, to fulfill its obligations under the Nebraska Telecommunications Universal Service Fund Act, the Commission tentatively concludes that rural and non-rural carriers should be defined based upon Neb. Rev. Stat. 75-609.01(1). This definition will allow the Commission to afford different regulatory treatment, where necessary, for rural and non-rural ILECs in a manner necessary to fulfill the state's universal service mandate.

#### **J. Uncollectible Accounts**

22. The Commission tentatively concludes that telecommunications carriers should be allowed to deduct uncollectible amounts from the revenues subject to the NUSF surcharge, in the event monies directly related to the uncollectible amounts have already been remitted to the NUSF. The Commission does not believe that it is fair to require companies to remit on monies that are not collected from telecommunications subscribers. However, non-payment of NUSF surcharge shall be considered as non-payment of services rendered by the telecommunications provider and subject to the appropriate remedies including disconnection of service. For example, if a subscriber would pay for their basic local exchange service but not pay the NUSF surcharge assessed on such service, that subscriber should be treated as not paying the bill for their basic local exchange service.

#### **K. Sales and Purchases**

23. The Commission tentatively concludes that when an ILEC's exchange(s) are sold or merged, the determination of whether the purchasing company will be classified as rural or non-rural, for purposes of the NUSF, will be based on total company size after the purchase. As set forth above, companies with more than five percent (5.0%) of the state's subscriber line in aggregate will be classified as non-rural for NUSF purposes. Therefore, if a rural ILEC acquires access lines that in the aggregate cause their total access lines to exceed five percent (5.0%) of statewide average, the entire ILEC would be subject to non-rural treatment for purposes of the NUSF. Also, when a non-rural ILEC purchases a rural ILEC's exchange(s), the purchased exchange(s) should then be classified as non-rural for purposes of the NUSF.

24. The Commission tentatively concludes that as a condition for approval of an acquisition or merger request, the acquiring company must agree that, absent a demonstration of cost, access charges in the acquired exchange(s) will not be increased. As discussed above, the purpose of the NUSF is to create a stable, non-discriminatory, and competitively neutral universal service process through the elimination of implicit subsidies and funding, where necessary, provided via the NUSF surcharge. Given that the necessary NUSF funding will already be in place, the Commission sees no reason to increase implicit subsidies in access prices in the acquired exchange(s).

25. The Commission reiterates that the above findings are tentative in nature. Accordingly, the Commission will hold a public hearing on said findings on November 8, 2000, at 9:30 a.m. CDT in the Commission Hearing Room, 1200 "N" Street, 300 The Atrium, Lincoln. Parties wishing to testify at said hearing are requested to file pre-filed testimony with the Commission on or before October 24, 2000.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that a public hearing on the tentative findings set forth above shall be held on November 8, 2000, at 9:30 a.m. CDT in the Commission Hearing Room, 1200 "N" Street, 300 The Atrium, Lincoln, Nebraska.

IT IS FINALLY ORDERED that parties wishing to testify at said hearing are requested to file pre-filed testimony with the Commission on or before October 24, 2000.

MADE AND ENTERED at Lincoln, Nebraska, this 12th day of September, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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